

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sruthi Venigalla	Team: Squad #13	CCRB Case #: 201411013	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 08/24/2014 3:30 AM	Location of Incident: § 87(2)(b)	Precinct: 43	18 Mo. SOL 2/24/2016	EO SOL 2/24/2016	
Date/Time CV Reported Tue, 10/28/2014 3:58 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 10/28/2014 3:58 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			Unknown
2. POM Declan Ludington	14327	953018	043 PCT
3. POM Edwin Espinal	09609	934831	043 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Declan Ludington	Abuse: PO Declan Ludington entered § 87(2)(b) in the Bronx.	
B.POM Edwin Espinal	Abuse: PO Edwin Espinal entered 682 Seward Avenue, Apt. 3G in the Bronx.	
C. Officers	Abuse: Officers entered § 87(2)(b) Apt. 3G, in the Bronx.	

Case Summary

On October 28, 2015, § 87(2)(b) filed this complaint on behalf of § 87(2)(b) whom she identified as her mother, and § 87(2)(b) and § 87(2)(b) whom she identified as her siblings. On November 6, 2015, § 87(2)(b) appeared at the CCRB and declined to provide a statement because of a pending criminal court trial. Neither § 87(2)(b) nor § 87(2)(b) cooperated with the investigation. This case was again re-opened on July 21, 2015 at the request of § 87(2)(b). On July 22, 2015, § 87(2)(b) appeared at the CCRB and provided a statement. His statement is summarized below.

On August 23, 2014, § 87(2)(b) was at his residence at § 87(2)(b) in the Bronx for a change of clothing, after the end of his work day. At approximately 3:00 p.m., he stepped out to visit his sister, § 87(2)(b) at § 87(2)(b), where he remained until approximately 5:45 p.m., playing with his niece and nephew.

§ 87(2)(b) returned to his apartment at approximately 6:00 p.m., where he remained until he fell asleep at approximately 9:00 p.m. § 87(2)(b) did not step out of his residence after returning, and no others stopped by. § 87(2)(b) lives in a three bedroom apartment, which he shares with his mother, § 87(2)(b) and his sister, § 87(2)(b). § 87(2)(b) was seated on a couch in the living room, and § 87(2)(b) who came into the apartment at approximately 12:00 a.m., remained in her bedroom.

At approximately 3:30 a.m., § 87(2)(b) awoke to an officer, identified by the investigation as PO Edwin Espinal of the 43rd Precinct, pulling him out of bed. § 87(2)(b) described PO Espinal as a black man dressed in plainclothes, with a bald head, muscular build, dark complexion, and who appeared to be 6'3" tall and 240 pounds. § 87(2)(b) also observed six other officers, all men, who were dressed in plainclothes. § 87(2)(b)'s counsel later informed him that two of those officers were named "Espinal" and "Ludington." § 87(2)(b) did not know which of the six officers, "Espinal" and "Ludington" were.

While § 87(2)(b) remained handcuffed in the bedroom, officers informed him of an individual in criminal possession of a firearm, who had been wearing blue jeans and a sweater. They asked him what he did the previous day, if he was part of a gang, and where the jeans and sweater were. An officer also asked him for his identification, which he pointed to, in the room.

§ 87(2)(b) initially stated that officers searched a room within the apartment, but then later stated that he did not see any officers search the rooms, and that because the rooms were messy, they likely conducted a visual observation for the blue jeans and sweater. § 87(2)(b) also did not observe officers entering the apartment, but that according to § 87(2)(b) officers knocked on the door several times before § 87(2)(b) opened the door. When § 87(2)(b) opened the door, officers asked her, "Who lives here?" § 87(2)(b) replied that she lived there with her son and daughter. § 87(2)(b) also informed § 87(2)(b) that officers pushed past § 87(2)(b) and then asked § 87(2)(b) to step outside of the apartment.

Approximately 30 minutes later, officers placed § 87(2)(b) under arrest for criminal possession of a firearm and removed him from the apartment. He was transported to the 43rd Precinct stationhouse, and was then shown a bronze firearm, which § 87(2)(b) stated he had not seen prior to the stationhouse. No others were handcuffed or arrested.

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation because of § 87(2)(b)'s arrest.

- § 87(2)(b) s NYSID and arrest numbers which were obtained from his arrest report do not list § 87(2)(b) s criminal conviction history through the Office of Court Administration database.

Civilian and Officer CCRB Histories

- PO Edwin Espinal has been a member of the NYPD for 11 years. He has had 32 other allegations involving 13 cases, none of which have been substantiated. § 87(2)(g) (See Board Review - 64).
- PO Declan Ludington has been a member of the NYPD for three years. He had had seven other allegations involving two other cases. In CCRB case number 201310095, PO Ludington received instructions for a substantiated allegation of offensive language based on race. § 87(2)(g) (See Board Review - 64).
- § 87(2)(b) and § 87(2)(b) have not filed any previous complaints with the CCRB (See Board Review - 58).

Attempts to Contact Civilians

§ 87(2)(b)

When this case was reopened, the undersigned initiated a phone call to § 87(2)(b) who stated that § 87(2)(b) whom he identified as his sister, was unavailable at the time and that § 87(2)(b) whom he identified as his mother, was hospitalized due to terminal illness. During a subsequent phone call on July 27, 2015, § 87(2)(b) verified her contact information and provided a telephone statement which is summarized below (See Board Review-65).

On August 23, 2014, § 87(2)(b) returned to her residence at § 87(2)(b) in the Bronx at approximately 11:45 p.m. When she walked into the three bedroom apartment which is owned and resided in by her mother, § 87(2)(b) and her brother § 87(2)(b) who share a bedroom, § 87(2)(b) and § 87(2)(b) were asleep on a bed in the same bedroom. A few hours later at a time that she could not recall in the early morning hours on August 24, 2014, § 87(2)(b) heard loud knocking on the front door, followed by § 87(2)(b) who was already out of her bedroom to open the front door, shouting for § 87(2)(b) remained asleep in the bedroom; however, § 87(2)(b) came out of the bedroom at which point the front door was already opened. She observed an officer, identified by the investigation as PO Ludington, with his shield displayed, at the entrance. According to § 87(2)(b) he pushed past § 87(2)(b) such that it caused her to step back with her walker. An additional four officers stepped in after PO Ludington, and three more officers arrived later. PO Ludington asked, "Who else is in the apartment with you?" to which § 87(2)(b) replied, "Just my grandma and my brother." PO Ludington asked § 87(2)(b) to step out of the apartment and remain in the hallway outside of the entrance, which she complied with. PO Ludington initially asked § 87(2)(b) to step out, however, she was allowed to remain inside because she was elderly. § 87(2)(b) remained in the hallway with the front door shut, for an amount of time she could not recall, with another officer. When § 87(2)(b) was allowed to step back into the apartment, she observed § 87(2)(b) standing shirtless, with sweatpants on, in handcuffs. She later learned that § 87(2)(b) has been arrested for criminal possession of a weapon.

§ 87(2)(b) was scheduled to appear at the CCRB on August 3, 2015, however, she did not do so and did not call to cancel or reschedule. On August 4, 2015, § 87(2)(b) mailed a missed-appointment letter and initiated a phone call to reschedule her appointment. However, she disconnected the phone call. Between August 10, 2015 and August 14, 2015, the undersigned initiated three more phone calls, left voicemails, and mailed one please-call letter to § 87(2)(b). She called the undersigned one more time on August 25, 2015 and agreed to appear at the CCRB on August 28, 2015. However, she did not appear and did not call to cancel or reschedule her appointment (Please see attached IAs).

§ 87(2)(b)

No contact attempts were made to § 87(2)(b) because, according to § 87(2)(b) and § 87(2)(b) who identified her as their mother, § 87(2)(b) was hospitalized due to terminal illness (See attached IAs).

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b)'s arrest report indicates that on August 24, 2014, he was arrested by PO Ludington (See Board Review - 26). During his interview at the CCRB on August 11, 2015, PO Ludington admitted to interacting with § 87(2)(b) and stated that his partner was PO Edwin Espinal. PO Espinal also admitted to interacting with § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegations not pleaded

- **Abuse of Authority - Stop:** § 87(2)(g)
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)

§ 87(2)(b) The officers also stated that § 87(2)(b) ran, dropped a firearm and then entered his residence. Furthermore, § 87(2)(b) was arrested for criminal possession of a loaded firearm in the second degree. § 87(2)(g)

§ 87(2)(g)

Allegation A – Abuse of Authority: PO Declan Ludington entered § 87(2)(b)

in Brooklyn.

Allegation B – Abuse of Authority: PO Edwin Espinal entered § 87(2)(b)

in Brooklyn.

Allegation C- Abuse of Authority: Officers entered § 87(2)(b) **in Brooklyn.**

§ 87(2)(g)

§ 87(2)(b) PO Ludington and PO Espinal were seated within an unmarked vehicle in the vicinity of § 87(2)(b) in the Bronx, when they observed § 87(2)(b) standing in the middle of the street, shouting at a group of individuals standing on an adjacent sidewalk. Both officers stated that they approached him to “find out what was going on,” and to see “if he was fighting with others.” When they approached him, both officers observed § 87(2)(b)'s hand in the front pocket of his sweatshirt which also contained an object of heavy

weight. PO Espinal further described the pouch as weighted and having a large bulge, but that § 87(2)(b)'s hand obscured any outline. Because of this, both officers believed that § 87(2)(b) was carrying a firearm.

According to PO Espinal, § 87(2)(b) did not comply with PO Espinal's multiple directives to remove his hand from his pocket, and instead placed his other hand inside the sweatshirt pouch and backed away from PO Espinal. PO Espinal continued telling § 87(2)(b) to remove his hands from his pocket, while § 87(2)(b) continued to back away until he reached a sidewalk. § 87(2)(b) then turned his back to PO Espinal and pulled the second arm out of his pocket and raised that arm, holding a cellphone in the air. When PO Espinal told § 87(2)(b) to remove his other hand, § 87(2)(b) then took off running. PO Espinal then gave chase to him, with PO Ludington farther behind.

§ 87(2)(b) ran through the northwest section of a housing complex and down a ramp next to a flight of stairs before falling. When § 87(2)(b) fell, a 22-caliber handgun fell out of the sweatshirt pouch. PO Espinal considered § 87(2)(b) to be under arrest at this point. A property voucher prepared by PO Ludington on August 24, 2015 following § 87(2)(b)'s arrest lists a .22 Caliber pistol, a .22 long rifle magazine and a cartridge. The property voucher indicates that that § 87(2)(b) was in possession of loaded firearm which was recovered from a sidewalk by PO Ludington (See Board Review - 60).

§ 87(2)(b) stood back up and continued running and PO Espinal continued to chase § 87(2)(b). PO Espinal followed § 87(2)(b) to the § 87(2)(b) floor of § 87(2)(b) where he observed § 87(2)(b) enter § 87(2)(b). At this point, PO Ludington caught up to PO Espinal and both officers approached the closed apartment door. Neither officer knew whether § 87(2)(b) lived in the apartment, but at the door, they heard a man and woman arguing. The officers knocked on the door and identified themselves as "officers" before "an older woman", identified by the investigation as § 87(2)(b) opened the door. PO Espinal then asked if a man had just entered the apartment.

§ 87(2)(g)
According to PO Espinal, the woman told the officers that they could enter, and she guided them to her bedroom in the back of the home. According to PO Ludington, the woman pointed to a room, that was approximately ten feet from the front door. PO Espinal stated that neither he nor his partner asked for permission, and PO Ludington stated that § 87(2)(b) gave no indication that she was consenting to the entry. Because PO Espinal radioed for assistance, other officers arrived at the location. Neither PO Ludington nor PO Espinal could recall who entered the location. According to event number § 87(2)(b) at approximately 3:59 a.m., there was a foot pursuit for § 87(2)(b) in the vicinity of § 87(2)(b) (See Board Review – IA 63).

An individual who is under arrest outside of their home cannot avoid arrest by the expedient of escaping into a private place. People v. Skinner 284 A.D.2d 906 (See Board Review - 57).

§ 87(2)(g)
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Pod:

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date